

# Notice of Allowability

Application No.

10/087,013

Examiner

Zachariah Lucas

Applicant(s)

SCHERF ET AL.

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the paper filed November 5, 2003.
2. ☒ The allowed claim(s) is/are 12,21 and 56-61.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

- |   |  |
|---|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                     |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>12/12/2003</u> |
| 3 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. <u>11/5/2003</u> | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                             |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material                      | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                       |
|   | 9 <input type="checkbox"/> Other   |

## **DETAILED ACTION**

### ***Status of the Claims***

1. Currently, claims 12, 21, and 56-61 are pending in the application. Claims 1-55 were pending in the application upon the mailing of the prior action on July 1, 2003. In that action, claims 1-11, 22, 23, 25-31, and 34-55 were withdrawn as to non-elected inventions; claims 13-21, 24, 32, and 33 were rejected; and claim 12 was objected to as dependant on a rejected claim. In the Response filed on November 5, 2003, the Applicant cancelled claims 1-11, 13-20, and 22-55; amended claims 12 and 21, and added new claims 56-61.

The pending claims, as amended in the Examiner's Amendment below, are allowed.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on November 5, 2003 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

### ***Objections to the Application***

3. In the prior action, claims 16, 12, 18-21, and 24 were objected to for various informalities. In view of the amendments and cancellations to the claims, the objections are withdrawn.

### ***Claim Rejections***

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4. The outstanding rejections to the claims are withdrawn in view of the cancellation or amendment thereto.

#### **EXAMINER'S AMENDMENT**

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Nancy W. Vensko on December 12, 2003.

The application has been amended as follows:

In claim 21, the article -- an-- has been inserted between the terms "or" and "immunogenic" in line 2 of the claim.

In claim 57, in the phrase "is the immunogenic fragment" in line two of the claim, the article "the" has been replaced by the article -- an-- to clarify that the claim reads on any of the claimed fragments, rather than on a specific fragment.

In claim 58, in the phrase "is the immunogenic fragment" in line two of the claim, the article "the" has been replaced by the article -- an-- for the same reason as indicated above with respect to claim 57.

In claim 59, the claim has been amended by inserting the term --one-- between the words "any" and "of" in the phrase "any of Claims 12, 56, 57, and 58" such that the claim depends from these claims in the alternative only.

6. The following is an examiner's statement of reasons for allowance: In view of the amendment of the claims to read on polypeptides comprising immunogenic fragments of a disclosed sequence, rather than on functionally, but not structurally, defined fragments of SEQ

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ID NO: 2, the claims as rewritten are found to be allowable in subject matter and over the prior art.

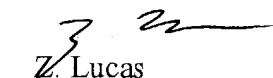
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


### *Conclusion*

7. Claims 12, 21, and 56-61 are allowed.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 703-308-4240. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 703-308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

  
Z. Lucas  
Patent Examiner

  
JAMES HOUSEL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600